

LEGISLATIVE RESEARCH COMMISSION

REPORT

TO THE

1979^{74. 112}

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND SESSION, 1980



ADMINISTRATIVE RULES

LEGISLATIVE RESEARCH COMMISSION

REPORT

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ADMINISTRATIVE RULES

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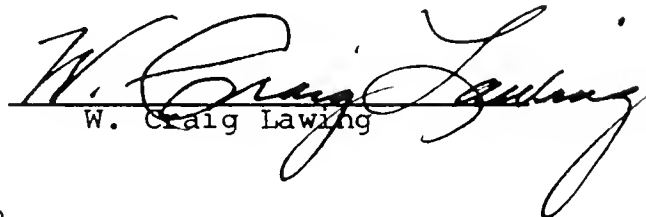
May 29, 1980

TO THE MEMBERS OF THE 1979 GENERAL ASSEMBLY
(SECOND SESSION 1980):

The Legislative Research Commission herewith reports on the work of its Administrative Rules Review Committee. The Legislative Research Commission recommends the legislation contained in this report to the 1980 Session of the General Assembly under the provisions of G.S. 120-30.33.

Respectfully submitted,


Carl N. Stewart, Jr.


W. Craig Lawing

Co-Chairmen

LEGISLATIVE RESEARCH COMMISSION

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ADMINISTRATIVE RULES REVIEW COMMITTEE
PROCEDURES

Article 6C of Chapter 120 of the General Statutes (G.S.) sets forth the statutory scheme underlying the legislative review of administrative rules. A copy of this Article is attached as Appendix A.

Administrative rules in North Carolina are reviewed by the legislative branch in a two-tier process in the Legislative Research Commission. The review began in October 1977 for a two-year trial period (Chapter 915 of the 1977 Session Laws). The 1979 General Assembly extended the life of the review process for an additional two years (Chapter 1030 of the 1979 Session Laws).

The Administrative Review Committee is the first tier of the review process. The Committee is a permanent committee of the Legislative Research Commission.

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly.

The Committee's seven members are appointed by the cochairmen of the Legislative Research Commission from the General Assembly for two-year terms. The chairman of the

Committee is elected by the Committee members (G.S. 120-30.26). In the past, there has been an informal agreement that the chairmanship is held by the house with the fewer members on the Committee. The names of the present Committee members are listed in Appendix B.

The Committee must meet monthly (G.S. 120-30.27). The Committee is staffed from the Legislative Services Office. The Director of Research and three staff attorneys aid the Committee's work on a part-time basis. The Committee employs a research assistant and two computer operators.

G.S. 120-30.25 required the Attorney General to submit copies of all rules filed prior to October 1, 1977 to the legislative Research Commission for review by the Committee. Rules filed after this date must be filed with the Director of Research prior to being filed with the Attorney General. No rule is effective until filed with the Attorney General (G.S. 150A-59; American Guar. and Liab. Ins. Co. v. Ingram 32 NC App. 552 [1977]) and no rule can be filed with the Attorney General unless it bears a notation that it has been filed with the Director of Research (G.S. 150-60).

G.S. 150A-58 defines rule for the purpose of filing requirements. A rule is every rule adopted by any agency but does not include rules relating only to internal management of any agency, directives or advisory opinions to any specific person or group with no statewide applicability, dispositions of

any specific issue by adjudication, or rate or tariff orders. The definition of agency excludes the State judiciary and legislature, the Employment Security Commission, and political subdivisions of the State. The Industrial Commission and Utilities Commission are exempted from filing with the Director of Research by G.S. 150A-60 and G.S. 120-30.24(1).

G.S. 120-30.25(c) describes the information contained in the Agency Report (see Appendix C) which is required to be filed with each rule. The report requires a brief summary of the rule, citation of the statutory authority for the rule, a statement of the circumstances requiring adoption, amendment, or repeal of the rule, and the effective date of the rule.

Rules filed with the Director are numbered in sequence in the order in which they are received. The rules are summarized. With the aid of the computer, the rule's catchline, citation, summary, date of filing, and date of expiration of the review period are entered into a log. The professional staff reviews the rules filed for content and statutory authority. In the log the Committee staff assigns two stars to those rules with which there are serious questions as to statutory authority.

G.S. 120-30.28 requires the Director to submit the rules to the Committee, which determines if the agencies had statutory authority to promulgate the rules. At its monthly meeting, the Committee reviews the log. If the Committee finds that an agency lacked statutory authority to promulgate a rule, it "objects" to

that rule. The Director transmits the report of the objection and the reasons for it to the agency. A sixty-day time period is set in the statute for review of a rule by the Committee. In the case of rules in which the expiration period has expired, G.S. 120-30.35 allows the cochairmen of the Legislative Research Commission to call a public hearing on recommendation of the Committee or motion of any Commission member to review these rules. The statute sets a fifteen-day notice of hearing requirement. To date, the Commission has utilized this statute in one instance.

Following the monthly meeting, the staff sends letters of objection and of inquiry to the appropriate agencies pursuant to the Committee's direction. The Committee has taken the position that a letter of inquiry (which asks questions of an agency about a rule without objecting to the rule) tolls the sixty-day period of the Committee's review. The Committee, once a month, reports to the Legislative Research Commission on the action taken on rules (G.S. 120-30.32).

An agency must amend a rule to which the Committee has objected or return it to the Committee without change within 60 days of notification of the objection (G.S. 120-30.29). Any unchanged rules are referred together with the Committee's objection by the Director to the Legislative Research Commission.

The second tier of the review process is before the Legislative Research Commission. The Legislative Research

Commission may review the rule to determine any lack of statutory authority. The Commission has 60 days to review a rule referred to it.

G.S. 120-30.17 authorizes the Legislative Research Commission:

(5) To review the rules of all administrative agencies pursuant to Article 60 of this Chapter to determine whether or not the agencies acted within their statutory authority in promulgating the rules.

(6) To meet during the regular session of the General Assembly only for the purposes of reviewing rules pursuant to G.S. 120-30.30 or holding public hearings pursuant to G.S. 120-30.35.

If the Commission agrees with the Committee, the rule and the Commission's objections are forwarded to the Director who transmits them to the agency (G.S. 120-30.30).

Objections by the Commission to rules are noted in the history note of the rule contained in the Administrative Code (12 NCAC 26 .0411). Copies of objections by the Committee and by the Commission are sent to agency's head, the administrative procedure act coordinator, and attorney; the head of the State

Department in which the agency is contained; and the Governor, if the Department is directly under his supervision.

The agency must respond to the Commission within 30 days of notification of the objection by either amending the rule to meet the Commission's objection or returning the unamended rule (G.S. 120-30.31).

A rule's effectiveness is not affected by the administrative rules review procedure. In the case of a rule which is the basis of a Legislative Research Commission objection, the Commission may submit a report to the next session of the General Assembly recommending "legislative action" (G.S. 120-30.33).

The Legislative Research Commission usually requests proposed legislation from the Committee which reviews the drafts prepared by the staff.

WORK

Through the May, 1980 meeting of the Committee, there have been 11,097 filings of rules. Some of those filings were later rejected by the Attorney General for errors in formatting. In the 31 months that the Committee has been in existence, it has reviewed nearly 10,000 rules. During the first calendar year of operation (1978), the Committee reviewed a total of 4,356 rules and in the second calendar year it reviewed a total of 3,848 rules. Discounting the number of rules reviewed for the last two

months of 1977 because of the starting out process, the Committee notes that the average number of rules reviewed per month has declined steadily since the Committee began its work from--303 in 1978, 320 in 1979, to 313 rules for the first part of 1980. The table in Appendix D shows the number of rules reviewed by each year and month broken down into amendments, recodifications, adoptions, readoptions, repeals and emergency rules.

RECOMMENDATIONS

Pursuant to the authority contained in Article 6C of Chapter 120 of the General Statutes, the Legislative Research Commission has reviewed and recommends the following legislative action.

Increase the Membership of the Committee and Establish a Quorum

The Legislative Research Commission is mindful of the important work of the Committee, the need to acquaint more members of the General Assembly with the Committee's place in the administrative rules process, and the need to have greater participation of General Assembly members in the Committee's work.

The Commission therefore recommends legislation (see Appendix E-1) which will increase from seven to nine the members

or the Committee and will establish a quorum for the work of the Committee.

Department of Justice

Police Information Network

12 NCAC 4C .0406 - (Access by Defendant's Attorney)

Rule 12 NCAC 4C .0303(a) (Provisions for Review) (see Appendices F-3 and F-4) was filed with the Administrative Rules Review Committee on April 21, 1978, by the North Carolina Department of Justice, Police Information Network (PIN). This rule and supporting materials are found in Appendix F. At the June 28, 1978 meeting, the Committee directed the staff to request information from the Police Information Network concerning who can get information from the PIN system and the process they must use. The agency responded at the August 17, 1978 meeting of the Committee with a copy of the "Procedure for Attorney Access to PIN" as written by Mr. David S. Crump, Assistant Attorney General (F-9). The Committee directed the staff to inform the Department of Justice that this procedure was contrary to the language of G.S. 114-10.1, which allows an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 access to the PIN system and that the procedure outlined is in the Committee's opinion a rule and subject to the filing requirements of the Committee.

On February 28, 1979, the Department of Justice, Police Information Network, filed Rule 12 NCAC 4C .0406 (Access by Defendant's Attorney) (F-17 and F-18). At the April 17, 1979 meeting of the Administrative Rules Review Committee the Committee objected to this rule as lacking statutory authority to require that an attorney receive the approval of the District Attorney prior to gaining access to information in the PIN system (F-19).

The Department of Justice responded on June 29, 1979, by returning the rule unamended and stating that the rule does not prohibit access to the PIN system but establishes a mechanism for such access (F-20). The Legislative Research Commission continued the objection of the Committee on August 24, 1979 (F-25), and scheduled a hearing on the rule on September 27, 1979, at which time they received testimony from the Department of Justice and the Trial Attorney's Association. The Legislative Research Commission voted to direct the staff to prepare an amendment to G.S. 114-10.1(c) which would clarify access to PIN information and report to the next meeting of the Legislative Research Commission, with the Administrative Rules Review Committee reviewing the legislation as drafted by the staff.

Two drafts of amendments to G.S. 114-10.1(c) were presented to the Administrative Rules Review Committee on November 15, 1979. The Committee made no recommendation on either draft to the Legislative Research Commission. The Legislative Research Commission, at its February 28, 1980 meeting, approved the draft

of the two submitted which gave "unrestricted" access to attorneys to the PIN system. (F-1).

Subsequently the Chief of the National Crime Information Center, Mr. Lawrence G. Lawler, wrote to Mr. William C. Corley, Director of the Police Information Network, in response to Mr. Corley's inquiry concerning the status of PIN should the proposed amendment pass the General Assembly that "[S]hould legislation be approved for providing unrestricted access and dissemination of the information contained in NCIC to defense counsel, PIN would be subject to cancellation of services of NCIC." (E-44)

State Board of Practicing Psychologists

21 NCAC 54 .0303 - (Education Requirements)

Rule 21 NCAC 54 .0303(b) (Education Requirements) was filed with the Administrative Rules Review Committee on February 5, 1979, by the North Carolina State Board of Practicing Psychologists. This rule and supporting materials are found in Appendix G. During its March 13, 1979 meeting, the Committee instructed its staff to request information concerning the rule. Upon receipt of a report on the rule at its April meeting, the Committee formally objected to the rule on April 17, 1979. The objection was raised on the basis that there exists no statutory authority to require courses on individual assessment in the master's degree program prerequisite to licensure as a

psychological examiner. Following the Board's response that it was acting within its statutory authority while requiring these courses and refusal to change the rule, the Committee forwarded its objection to the Legislative Research Commission. The Commission then continued the objection of the Committee on August 9, 1979. Again the Board refused to change the rule. This inaction prompted the Legislative Research Committee to direct the staff to draft corrective legislation which was approved by the Administrative Rules Review Committee at its November, 1979, meeting. At its next meeting on February 28, 1980, the Legislative Research Commission approved the legislation as submitted by the Committee.

The Board filed a version of the rule with a minor, unrelated amendment for the Committee's review on November 29, 1979. The Committee objected to this amended version, (Rule 21 NCAC 54 .0303 [Education Requirements]) on January 24, 1980. The Board responded March 19, 1980, by citing its position expressed in its first letter of response, to the Administrative Rules Review Committee's first objection, as its present position.

APPENDICES

APPENDIX A

CHAPTER 120. GENERAL ASSEMBLY

ARTICLE 6C.

Review of Administrative Rules.

§ 120-30.24. Definitions.--As used in this Article:

(1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government, any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, the Industrial Commission, the Utilities Commission, the Employment Security Commission, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(2) "Commission" means the Legislative Research Commission.

(3) "Committee" means the Administrative Rules Review Committee created by G.S. 120-30.26.

(4) "Director" means the Director of Research of the Legislative Services Commission.

(5) "Rule" means every rule, regulation, ordinance, standard, and amendment thereto or repeal thereof adopted by any agency and includes rules and regulations regarding substantive matters, standards for products, and procedural rules for complying with statutory or regulatory authority or with requirements or executive orders of the Governor.

"Rule" does not include:

- a. Rules, procedures, or regulations that relate only to the internal management of an agency;
- b. Directive or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- c. Disposition of any specific issue or matter by the process of adjudication; or
- d. Orders establishing or fixing rates or tariffs.

(1977, c. 915, s. 1; 1979, c. 541, s. 3.)

§ 120-30.35. Filing of rules.--(a) On October 1, 1977, the Attorney General shall transfer to the office of the Legislative Research Commission a copy of every rule that has been filed with him pursuant to Article 5 of General Statutes Chapter 150A. Rules adopted prior to October 1, 1977, may be reviewed by the Committee and by the Commission.

(b) Rules adopted by an agency on or after October 1, 1977, shall be filed in the office of the Director prior to the filing made with the Attorney General pursuant to G.S. 150A-59.

(c) The rules filed with the Director pursuant to subsection (b) of this section shall be accompanied by a report. This report shall contain:

- (1) A brief summary of the content of the rule if adopted or repealed, or a brief summary of the change in the rule if amended;
- (2) A citation of the enabling legislation purporting to authorize the adoption, amendment, or repeal of the rule;
- (3) A statement of the circumstances that required adoption, amendment, or repeal of the rule; and
- (4) A statement of the effective date of the rule.

(d) Executive orders of the Governor are required to be filed, but executive orders of the Governor are not subject to the provisions of G.S. 120-30.28 through G.S. 120-30.35. (1977, c. 915, s. 1.)

§ 120-30.26. Administrative Rules Review Committee.--There is created a permanent committee of the Legislative Research Commission to be known as the Administrative Rules Review Committee. The Committee shall be composed of seven members. On October 1, 1977, and biennially thereafter, the cochairmen of the Commission shall appoint the Committee members from the membership of the General Assembly for terms of two years, and the members so appointed shall elect one of their number to serve as chairman. Any vacancy that occurs in the membership of the Committee for any reason other than the expiration of a term shall be filled for the remainder of the unexpired term by election of a member of the General Assembly by the Commission at its next meeting after the occurrence of the vacancy. The

Committee shall perform all of the duties of the Commission with respect to reviewing rules of administrative agencies except as provided in G.S. 120-30.35. (1977, c. 915, s. 1; 1979, c. 1030, s. 3.)

§ 120-30.27. Meetings of Committee.--The Committee shall meet at least monthly at times and places specified by the chairman. The members of the Committee shall be compensated for attending meetings as provided in G.S. 120-30.18. Professional, clerical or other employees required by the Committee shall be provided in accordance with G.S. 120-32. (1977, c. 915, s. 1.)

§ 120-30.28. Review of rules.--(a) After a rule is filed with the Director, he shall submit it to the Committee, which may determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the Committee finds that an agency did not act within its statutory authority in promulgating a rule the Committee shall report that fact to the Director who shall transmit the report to the agency that made the rule. The report shall include a written statement of the Committee's objections and the reasons therefor.

(c) The Committee shall review a rule submitted to it by the Director within 60 days following the submission of the rule. (1977, c. 915, s. 1.)

§ 120-30.29. Objections of Committee.--The agency that filed a rule to which the Committee objects may amend the rule to remove the cause of the Committee's objections and return the rule to the Committee for further review. The agency may return the rule without change with the Committee's notation of objection attached. The agency shall return the rule with or without

change within 60 days of the notification to the agency of the Committee's objection. When the rule to which the Committee has objected is returned without change, the rule and notation of objection shall be referred by the Director to the Commission. (1977, c. 915, s. 1.)

§ 120-30.35. Review of rule by Legislative Research Commission.--(a) The Commission may review the rule in the same manner as the Committee to determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the Commission determines that an agency did not act within its statutory authority in promulgating a rule, a written statement of its objections and statement of its reasons shall be attached to the rule, and the rule and objection and statement of reasons shall be forwarded to the Director, who shall transmit it to the rule-making agency.

(c) The Commission shall act on the rule submitted in accordance with G.S. 120-30.29 within 60 days after the rule was returned to the Committee by the rule-making agency. (1977, c. 915, s. 1.)

§ 120-30.31. Regulation objected to by Legislative Research Commission.--The agency may revise a rule to remove the cause of the objections of the Commission, and may return the revised rule to the Commission or it may return the rule without change with the Commission's objections attached. The agency shall return the rule with or without change within 30 days of the notification to the agency of the Commission's objections. (1977, c. 915, s. 1.)

§ 120-30.32. Reports of the Committee.--The Committee shall

report monthly to the Commission on all actions taken on rules.
(1977, c. 915, s. 1.)

§ 120-30.33. Legislative Research Commission recommendations.--All rules that have been reviewed by the Committee and the Commission shall remain in effect. If the agency returns the rule with the Committee or Commission objections attached without change, the Commission may submit a report to the next regular session of the General Assembly recommending legislative action.

§ 120-30.34. Emergency rules.--Rules adopted in accordance with the procedures of G.S. 150A-13 may be reviewed by the Committee. The Committee, in addition to reviewing the rules, may review the reasons given in the agency finding of emergency.
(1977, c. 915, s. 1.)

§ 120-30.35. Hearings.--(a) Notwithstanding the provisions of G.S. 120-30.28(c) and G.S. 120-30.35(c), the cochairmen of the Commission may call a public hearing on any rule upon the recommendation of the Committee or upon the motion of any member of the Commission.

(b) At least 15 days before the hearing, notice of the hearing shall be given to the rule-making agency and to such other persons that desire to be heard, that the cochairmen of the Commission consider to be persons that may be affected by the rule, or that may request copies of the notice.

(c) The provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee and the Commission. (1977, c. 915, s. 1.)

APPENDIX B

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

House Speaker Carl J. Stewart, Jr. Chairman	Senate President Pro Tempore W. Craig Lawing, Chairman
Representative Chris S. Barker, Jr.	Senator Benson P. Barnes
Representative John R. Gamble, Jr.	Senator Melvin Daniels, Jr.
Representative H. Parks Helms	Senator Carolyn Mathis
Representative John J. Hunt	Senator R. C. Soles, Jr.
Representative Lura S. Tally	Senator Charles Vickery

MEMBERSHIP OF ADMINISTRATIVE RULES REVIEW COMMITTEE 1979-1981

Senator Robert B. Jordan, III, Chairman
Senator Charles E. Vickery
Senator Willis P. Whichard
Representative William E. Clark
Representative Charles D. Evans
Representative James F. Morgan
Representative Kenneth B. Spaulding

APPENDIX C

AGENCY REPORT: Legislative Review of Administrative Rules
(G.S. 120-30.20 et seq.)

DATE FILED:

Date: _____

(for Receipt Stamp)

From: _____

(name)

Adm. Procedures Act Coordinator - _____

(agency & address)

Phone: _____

To: Terrence D. Sullivan
Legislative Research Commission
Legislative Annex
10 East Jones Street
Raleigh, North Carolina 27611 - Phone: 919-733-7044
919-733-6182

JLE:

(citation; N. C. Administrative Code)

(catchline)

1) RULE SUMMARY

2) STATUTORY AUTHORITY CITATION

3) CIRCUMSTANCES REQUIRING RULE

4) EFFECTIVE DATE

Administrative Rules Review Committee Policies:

1) 60 DAY INITIAL REVIEW PERIOD

G.S. 120-30.23(c) sets up a 60 day period from the time of filing of a rule for the Administrative Rules Review Committee to review the rule. If an Agency has not been notified of an objection to a rule within 60 days of the filing of the rule, the Agency can consider that the rule has been accepted (not approved) by the Committee. No further formal review of the rule will be undertaken by the Committee unless there is a decision to proceed under the public hearing provision of G.S. 120-30.30.

2) CITATION TO FEDERAL LAW OR REGULATION

G.S. 120-30.20(c)(2) requires citation of North Carolina statutory authority for a rule when the rule is filed with the Committee. The Committee requests Agencies to also cite any Federal law or regulation that is relevant to the rule. Some brief treatment of the relevancy of the Federal law or regulation should be included in the statement of circumstances requiring the rule.

3) FILING OF READOPTED RULES

The case of American Guarantee & Liability Insurance Company v. Ingram, 32 N.C. App. 552, has been interpreted to require readoption of rules that do not meet certain procedural requirements. The Committee requests that Agencies give notice of all rules readopted on or after October 1, 1977, in response to this case, but the report on a rule required by G.S. 120-30.20(c) is necessary only with respect to new material included in the readoption. A report shall be made to the Committee only on new rules, amendments to old rules, and repeal of old rules; no report is required on simple readoption of rules identical to old rules.

11/1/77

LOG NO. & DATENUMBER OF RULES

	Amend	Recod.	Adopt	Readopt	Repeal	Emerg.	TOTALS
#1 - Nov. '77	42	3	35	0	1	0	81
#2 - Dec. '77	40	0	26	5	5	0	76
1977 TOTALS	82	3	61	5	6	0	157

#3 - Jan. '78	130	0	140	29	12	0	311
#4 - Feb. '78	214	0	44	9	7	0	274
#5 - March '78	136	0	71	3	10	0	220
#6 - April '78	139	15	106	2	44	43	349
#7 - May '78	58	0	31	7	7	5	103
#8 - June '78	71	0	23	6	21	0	121
#9 - July '78	50	0	222	5	30	0	337
#10 - Aug. '78	301	0	90	739	20	6	1156
#11 - Sept. '78	36	0	172	0	63	1	272
#12 - Oct. '78	112	0	95	0	98	2	307
#13 - Nov. '78	263	0	294	0	13	1	571
#14 - Dec. '78	165	0	115	0	46	2	330
1978 TOTALS	1705	15	1403	800	373	60	4356

LOG NO. 5 DATE

NUMBER OF RULES

	Amend	Recod.	Adopt	Readopt	Repeal	Emerg.	TOTALS
#15 - Jan. '79	61	0	163	0	21	1	246
#16 - Feb. '79	76	0	22	0	18	0	116
#17 - March '79	117	0	46	0	13	1	182
#18 - April '79	76	0	93	5	32	0	206
#19 - May '79	176	0	73	17	7	0	273
#20 - June '79	223	0	196	38	62	0	519
#21 - July '79	169	0	82	0	76	1	330
#22 - Aug. '79	113	0	339	1	36	0	494
#23 - Sept. '79	127	0	126	1	18	0	272
#24 - Oct. '79	194	0	195	0	20	70	479
#25 - Nov. '79	98	0	108	0	16	11	233
#26 - Dec. '79	216	0	252	0	16	12	496
1979 TOTALS	1653	0	1695	62	342	96	3848

#27 - Jan. '80	140	2	360	0	15	1	518
#28 - Feb. '80	51	0	252	12	38	0	353
#29 - March '80	91	0	169	0	19	0	279
#30 - April '80	239	0	123	0	21	6	389
#31 - May '80	27	0	18	0	6	1	52
1980 YEAR-TO-DATE	548	2	922	12	99	8	1591

FINAL	2953	20	4081	879	320	164	9952
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Referred to:-----

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MEMBERSHIP OF THE LEGISLATIVE RESEARCH
COMMISSION'S ADMINISTRATIVE RULES REVIEW COMMITTEE AND TO
ESTABLISH A QUORUM FOR THE COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. The second and third sentences of G.S. 120-
30.26 are rewritten to read as follows:

"The Committee is composed of nine members. On October 1 of
each odd-numbered year, the cochairmen of the Legislative
Research Commission shall jointly appoint Committee members from
the membership of the General Assembly for terms of two years,
and the members appointed shall elect one of their number to
serve as chairman."

Sec. 2. G.S. 120-30.27 is amended after the first
sentence and before the second sentence by inserting the
following:

"A quorum of the Committee shall consist of the chairman and
three other Committee members, or a majority of the Committee,
whichever is fewer."

Sec. 3. Notwithstanding the provisions of G.S. 120-30.26, the new appointments authorized by this act shall be made not later than July 15, 1980. The term of office of a new appointee shall be from time of appointment until October 1, 1981, or until the appointee ceases to be a member of the General Assembly, whichever occurs first.

Sec. 4. This act is effective upon ratification.

SESSION 1979 - Second Session 1980

INTRODUCED BY:

Referred to

A BILL TO BE ENTITLED

AN ACT TO ALLOW CRIMINAL DEFENSE ATTORNEYS ACCESS TO THE POLICE
INFORMATION NETWORK AS RECOMMENDED BY THE LEGISLATIVE RESEARCH
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-10.1(c) is hereby rewritten to
read as follows:

"(c) The Attorney General, after consultation with partici-
pating agencies, shall adopt rules governing the organization
and administration of the Police Information Network, including
rules governing the types of information relating to the admin-
istration of criminal justice to be entered into the system,
and who shall have access to such information. Notwithstanding
any general grant of rule-making authority, the Attorney General
shall adopt rules giving to a defense attorney who has entered
a criminal proceeding pursuant to G.S. 15A-141, unrestricted
access to information on the client represented. The Attorney
General may call upon the Governor's Crime Commission for advice
and such other assistance that the Committee may be authorized
to render."

Sec. 2. This act is effective upon ratification.

POLICE INFORMATION NETWORK

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- I. Rule
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 - B. Rule 12 NCAC 4C .0303(a) (Provisions for Review)
- II. Statutory Authority
 - A. G.S. 114-10
 - B. G.S. 114-10.1
- III. Committee Correspondence - September 8, 1978
- IV. Attorney General's Response - Memo (September 19, 1978)
- V. Rule
 - A. Agency Report (February 26, 1979)
 - B. Rule 12 NCAC 4C .0406 (Access by Defendant's Attorney)
- VI. Committee Objection
 - A. Correspondence - April 27, 1979
 - B. Objection Form
- VII. Attorney General's Response - Correspondence (June 29, 1979)
- VIII. Correspondence Referring Rule to Legislative Research Commission (July 13, 1979)
- IX. Legislative Research Commission Response (August 24, 1979)
- X. Attorney General's Response - Correspondence (September 11, 1979)
- XI. Federal Regulations
 - A. 28 C.F.R. §20.33
 - B. 28 C.F.R. §20.36
- XII. Correspondence From NCIC to PIN
Mr. William Corley, Director

DATE FILED:

Filing 1532

Date: April 21, 1978

From: Thomas F. Moffitt, Associate Attorney General
(name)

Adm. Procedures Act Coordinator - N. C. Dept. of Justice
(agency and address)

P. O. Box 629

Raleigh, NC 27602

Phone: 733-4723

To: William H. Potter, Jr.
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

RULE: 12 NCAC 4C .0303(a)
(citation; N. C. Administrative Code)

Provisions for Relief Review
(catchline)

RULE SUMMARY

States the provisions of review of a computerized criminal history record

STATUTORY AUTHORITY CITATION

G.S. 114-10; 114-10.1

CIRCUMSTANCES REQUIRING RULE

Changes and updates the provisions of review of a computerized criminal history record to include referral to the S.B.I.

EFFECTIVE DATE

January 5, 1978

Regulation 12 NCAC 4C .0303(a); EPOVISIONS FOR REVIEW; has been changed to read as follows:

(a) Each criminal justice agency utilizing the Police Information Network terminal and being asked by an individual to review his computerized criminal history records should refer the individual to the nearest SBI regional office or the identification section of the SBI.

History Note: Authority G.S. 114-10; 114-10.1;
40 Fed. Reg. 22114;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978.

~~§ 114-9.1. Revisor of Statutes. — The member of the staff of the Attorney General who is assigned to perform the duties prescribed by G.S. 114-9(3) shall be known as the Revisor of Statutes and he shall be subject to all the provisions of Chapter 126 of the General Statutes relating to the State Personnel System. (1947, c. 114, s. 1; 1957, c. 541, s. 10; 1967, c. 260, s. 2.)~~

~~Editor's Note. — For comment on this section, see 25 N C L Rev 459~~

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics. — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

- (1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.
- (2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.
- (3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
- (4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
- (5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

§ 114-10.1. Police Information Network. — (a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and

conducted under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2; 1975, c. 716, s. 5; 1977, c. 836.)

Editor's Note. — The 1975 amendment substituted "Division" for "Department" near the beginning of subsection (b).

The 1977 amendment added the present second sentence of subsection (c).

State Government Reorganization. — The Police Information Network was transferred to the Department of Justice by § 143A-55, enacted by Session Laws 1971, c. 864.

§ 114-11: Repealed by Session Laws 1969, c. 1190, s. 57.

§ 114-11.1: Repealed by Session Laws 1965, c. 310, s. 4.

§§ 114-11.2 to 114-11.5: Reserved for future codification purposes.

ARTICLE 3A.

Special Prosecution Division.

§ 114-11.6. **Division established; duties.** — There is hereby established in the office of the Attorney General of North Carolina, a Special Prosecution Division. The attorneys assigned to this Division shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Attorney General approves. In addition, these attorneys assigned to this Division shall serve as legal advisers to the State Bureau of Investigation and the Police Information Network and perform any other duties assigned to them by the Attorney General. (1978, c. 47, s. 2; c. 813.)

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. **Bureau of Investigation created; powers and duties.** — In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

ATOR LUTHER J. BRITT, JR.
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ATOR DALLAS L. ALFORD, JR.
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ATOR WILLIS P. WHICHARD



REPRESENTATIVE WILLIAM H. McMILLAN
COCHAIRMAN
REPRESENTATIVE RICHARD WRIGHT
REPRESENTATIVE JAMES F. MORGAN

September 8, 1978

Mr. William Corley, Acting Director
Police Information Network
407 North Blount Street
Raleigh, North Carolina 27611

Dear Mr. Corley:

On April 12, 1978, your office filed with me for review by the Administrative Rules Review Committee an amendment to 12 N.C.A.C. 4 .0303(a) requiring an individual who wishes to review his computerized criminal history to contact the local SBI regional office or the identification section of the SBI. The amendment was reviewed by the Committee as provided in G.S. 120-30.28. The Committee requested additional information from your agency concerning access to the Police Information Network (PIN) in light of G.S. 114-10.1 which allows attorneys who are representing criminal defendants access to PIN (copy of G.S. 114-10.1 attached). The Committee was concerned that there might be some administrative requirement that attorneys receive approval of the local district attorney prior to using PIN.

At our request, your office forwarded to the Committee staff a procedure adopted by PIN under which an attorney's access is apparently limited to discovery in the Superior Court covered in Article 48 of Chapter 15A, the Criminal Procedures Act (copy of PIN procedure attached). Discovery under Chapter 15A is confined to felony cases within the original jurisdiction of the Superior Court and it appears that an attorney would not have access to information from PIN in cases at the District Court level. The Committee does not understand this discovery related qualification, given the language in G.S. 114-10.1(c) which only requires "relevance" to the criminal proceeding

Mr. William Corley
Page 2
September 6, 1978

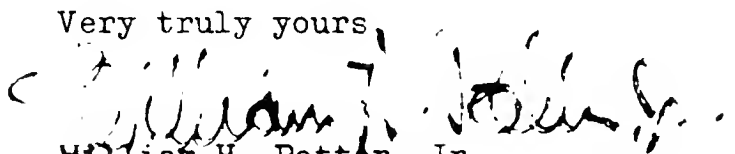
and an attorney's having entered a criminal proceeding in order for an attorney to obtain access to PIN. G.S. 15A-141 defines entry by an attorney in a criminal proceeding; there is no limitation to Superior Court proceedings.

The last paragraph of your procedure attributes to the General Assembly in the enactment of G.S. 114-10.1(c) an intent to limit access by attorneys who have entered a criminal proceeding which the Committee believes is not justified by a reading of the statute. It is the opinion of the Committee that the purpose of this statute is to allow attorneys who have entered any criminal proceeding access to PIN when information relevant to that proceeding is available.

Finally, the Committee suggests that your agency's procedure on attorney's access to PIN is an "agency regulation, standard or statement of general applicability that implements or prescribes law or policy . . ." as defined in G.S. 150A-10 and must be filed as such with the Attorney General and the Director of Research of the Legislative Services Commission.

The Committee requests that you review the questions raised by the Committee and respond at your earliest convenience.

Very truly yours,


William H. Potter, Jr.
Director of Research

WHPjr:crm

Attachment

PROCEDURE FOR ATTORNEY ACCESS TO PIN

Written by David S. Crump

Assistant Attorney General

Department of Justice

On June 30, 1977 the General Assembly amended G.S. 114-10.1 (The Pin Statute)

to provide that:

"The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding."

The new amendment is limited by Chapter 15A of the statutes, the Criminal Procedure Act, and by "relevance to that criminal proceeding." Article 43 of Chapter 15A provides what a criminal defendant may discover from the State. Discovery applies only to cases in the original jurisdiction of the superior court, i.e., felony cases.

Only two kinds of information which might be in PIN are required to be disclosed:

- (1) the defendant's prior record; and
- (2) documents or electronic recordings which are:
 - (a) in the possession of the State, and
 - (b) material to the preparation of a defense, and
 - (c) intended for use by the State as evidence, or
 - (d) obtained from or belonging to the defendant.

The discovery process is directed to the district attorney.

The General Assembly did not intend to give defense lawyers, who are not certified operators, direct access to PIN or to require a terminal operator to make these complicated legal judgments about what is relevant to a case. The new statute requires defendant's lawyers to go through the district attorney to obtain information from PIN. If the district attorney does not make a correct determination, defendant's counsel may approach the judge, who can then order the district attorney to provide the information requested.

§ 114-9.1. *Revisor of Statutes.* — The member of the staff of the Attorney General who is assigned to perform the duties prescribed by G.S. 114-9(3) shall be known as the Revisor of Statutes and he shall be subject to all the provisions of Chapter 126 of the General Statutes relating to the State Personnel System. (1947, c. 114, s. 1; 1957, c. 541, s. 10; 1967, c. 260, s. 2.)

Editor's Note. — For comment on this section, see 25 N.C.L. Rev. 459

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. *Division of Criminal Statistics.* — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

- History record*
- (1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.
 - (2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.
 - (3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
 - (4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
 - (5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, a. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

§ 114-10.1. *Police Information Network.* — (a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and

correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2; 1975, c. 716, s. 5; 1977, c. 836.)

Editor's Note. — The 1975 amendment substituted "Division" for "Department" near the beginning of subsection (b).

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ARTICLE 4.

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§ 114-12. **Bureau of Investigation created; powers and duties.** — In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal



State of North Carolina

Department of Justice

P. O. Box 629

RALEIGH

27602

RUFUS L. EDMISTEN
ATTORNEY GENERAL

19 September 1978

Subject: Police Information Network; Criminal Law and Procedure

Requested by: Mr. W. Thomas Long
Assistant City Attorney
Burlington, North Carolina

Question: Under N.C. Gen. Stat. §114-10.1(c), is it proper procedure for attorneys to seek and obtain information directly from the Police Information Network terminal without first securing the approval of the appropriate District Attorney or Judge?

Conclusion: No.

G.S. §114-10.1(c) as amended provides, in relevant part, as follows:

The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding.

The underlined portion of the section just quoted was added by S.L. 1977, Chapter 836, §1 (Eff. 30 June 1977).

The regulations adopted by the Attorney General for the governance of the Police Information Network appear as Chapter 4 of Title 12 of the North Carolina Administrative Code. The regulation governing access to

information maintained by the Police Information Network, 12 NCAC 4C .0402, provides in relevant part as follows:

(a) Access to information in the Police Information Network or through the Police Information Network is restricted to authorized criminal justice agencies and is available only on a need-to-know and need-to-see basis.

(b) No other agency will be authorized access to this information unless it has been certified as a qualified criminal justice agency by the Criminal Justice Training and Standards Council or governmental organizations established pursuant to statute which have as their sole function the collection and processing of criminal justice information.

The term "criminal justice agency" is defined in 12 NCAC 4A .0601(o); the definition contained therein does not include attorneys representing defendants in criminal cases.

Your attention is also directed to the regulation of the United States Department of Justice codified as 28 C.F.R. §20.36 (40 Fed. Reg. 22117, 20 May 1975), entitled "Participation in the Computerized Criminal History Program":

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

The Police Information Network is the National Crime Information Center (NCIC) control terminal in North Carolina. Furthermore, dissemination of criminal history record information from the National Crime Information Center is limited to criminal justice agencies for criminal justice purposes, 28 C.F.R. §20.33(a)(1). The National Crime Information Center's definition of "criminal justice agency" does not include attorneys representing defendants, nor does NCIC's definition of criminal justice purposes include defense of a criminal action, 28 C.F.R. §20.3(c), (d). Should the Police Information Network provide information to persons or agencies not authorized to receive the information or for an unauthorized purpose, then it would be subject to cancellation of National Crime Information Center services, 28 C.F.R. §20.38.

The 1977 legislation includes two limiting phrases: the information is to be available to an attorney "who has entered a criminal proceeding in accordance with G.S. §15A-141" and the available information must be "relevant to that criminal proceeding." Police Information Network terminals may be operated only by certified terminal operators, who are not lawyers, 12 NCAC 4B .0103. Read literally, the 1977 legislation would appear to require that defense attorneys be given access to the terminal directly. If the 1977 legislation were so read, it would appear to put the burden on the terminal operator to determine whether a given attorney has

entered an appearance pursuant to G.S. §15A-141 and whether any information which might be retrieved concerns the case in which the attorney has entered an appearance or is relevant to that case. This interpretation would result in absurd and undesirable consequences, potentially the termination of National Crime Information Center services.

It is well established that "where a literal interpretation of the language of a statute would lead to absurd results and contravene the manifest purpose of the statute, the reason and purpose of the law will be given effect...." 12 Strong's North Carolina Index 3d, Statutes §5.9 (1978). Since we cannot presume that the General Assembly intended absurd consequences, we cannot presume that it intended to require practices which would cause termination of National Crime Information Center Services to North Carolina and the Police Information Network. Furthermore, we cannot believe that the General Assembly intended that a lay terminal operator make the legal determinations as to whether an attorney has entered an appearance or whether any information retrieved is relevant to that case.

It is necessary, therefore, to determine the reason and purpose of the law. In doing so it is helpful to look to prior practice and experience, for in enacting legislation the General Assembly is presumed to have acted with care, deliberation, and full knowledge of prior and existing law, State v. Benton, 276 N.C. 641, 174 S.E.2d 793 (1970). Prior to enactment of S.L. 1977, Chap. 836, it was common practice for attorneys representing defendants in criminal actions to make a request of the District Attorney for information which might be available through the Police Information Network. These requests were frequently honored. Both the National Crime Information Center and the Police Information Network were aware of this practice, and neither has ever disapproved of it. Therefore, in the strictest sense, the rules governing access to Police Information Network information have never prohibited access to a defendant's attorney.

In light of this common practice, therefore, we think that the General Assembly intended to put into the statute a codification of the pre-existing practice but to remove any discretion on the part of the District Attorney in granting or denying the request of a defendant's attorney. The provision therefore makes clear what the District Attorney must do with respect to releasing Police Information Network information to defense attorneys and makes practice uniform across the State.

The only remaining question, therefore, is what information the General Assembly has required the District Attorney to release to a defendant's attorney. The statute requires the release of information "relevant to that criminal proceeding." Since the amendment makes specific reference to a provision of Chapter 15A of the General Statutes, and since Chapter 15A in Article 48 identifies the types of information discoverable by a defendant, we think that the District Attorney must release, upon request by a defendant's attorney, the kinds of information described in G.S. §15A-903. The 1977 amendment speaks of "criminal proceedings," and, therefore, unlike proceedings under the Criminal Discovery Act, the

District Attorney's duty to disclose Police Information Network information is not limited to cases in the Superior Court Division. The disclosure of Police Information Network information may be regulated by the trial judge in either division.

RUFUS L. EDMISTEN
Attorney General

David S. Orsini
Special Deputy Attorney General

DATE FILED
FEB 28 1979
LEGISLATIVE SERVICES CENTER
(FOR RECD & STAMP)

Date: February 26, 1979

From: William C. Corley
(name)

Adm. Procedures Act Coordinator -

(agency & address)

N. C. Department of Justice/ Police Information Network

407 N. Blount Street, P. O. Box 27047

Raleigh, N. C. 27610

Phone: 733-3171

To: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

RULE: Regulation 12 NCAC 4C .0406
(citation; N. C. Administrative Code)

5800

ACCESS BY DEFENDANT'S ATTORNEY
(catchline)

1) RULE SUMMARY

This rule describes the procedure that an attorney who is representing a defendant in a criminal case must follow in order to obtain information from a Police Information Network terminal.

2) STATUTORY AUTHORITY CITATION

G. S. 114-10.1(c)

3) CIRCUMSTANCES REQUIRING RULE

SEE ATTACHMENT

4) EFFECTIVE DATE

March 14, 1979

Form-10:LSO:Rev.9/1/78

Regulation 12 NCAC 4C .0406; ACCESS BY DEFENDANT'S ATTORNEY; is adopted to read as follows:

- (a) An attorney who has entered an appearance in a criminal case pursuant to G.S. 15A-141 is entitled to access to information available through the Police Information Network as provided in this Rule.
- (b) An attorney representing a defendant in a criminal case shall address a request on his professional letterhead to the district attorney in whose district the case is pending. The request must contain:
 - (1) a statement that the attorney has entered an appearance in accordance with G.S. 15A-141, describing the method by which the appearance has been entered;
 - (2) identification of the case by its caption and docket number;
 - (3) an unequivocal request for information which may be available through the Police Information Network;
 - (4) a description of the information or category of information which the attorney in question seeks. e.g., driving record, criminal record;
 - (5) if driver history is requested, the defendant's driver's license number; or
 - (6) if criminal history is requested, the defendant's full name, aliases, race, sex, date and place of birth, to the extent available to the attorney requesting the information.
- (c) If the district attorney or his assistant finds that the information requested is relevant to the criminal case, he must so note on the request and sign it.
- (d) If the district attorney or his assistant refuses the request, the requesting attorney may petition the court before which the case is pending for access to information which is relevant to the case.
- (e) The attorney representing the defendant may take the request with the notation of finding of relevance thereon to any agency having a PIN terminal in the district. The agency having the PIN terminal must respond to the requesting attorney by giving him a copy of the record or replying that no record is available through PIN within 24 hours of receipt of the approved request.
- (f) The terminal operator shall retain a copy of the request and a log of any information disseminated for one year.

History Note: Filed as an Emergency Regulation effective
November 14, 1978, for a period of 120 days
Statutory Authority G.S. §114-10.1(c); 150A-13;

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

REPRESENTATIVE WILLIAM H. McMILLAN
CHAIRMAN

ATOR DALLAS L. ALFORD, JR.
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ATOR I. BEVERLY LAKE, JR.
REPRESENTATIVE JAMES F. MORGAN
ATOR WILLIS P. WHICHARD
REPRESENTATIVE RICHARD WRIGHT



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

April 27, 1979

Mr. William C. Corley
North Carolina Department of Justice
Police Information Network
407 North Blount Street, Post Office Box 27047
Raleigh, North Carolina 27610

Dear Mr. Corley:

The Administrative Rules Review Committee reviewed Rule 12 NCAC 4C .0406 (Access by Defendant's Attorney, copy attached) during its April 17, 1979, meeting. At that time the Committee directed its staff to contact the North Carolina Department of Justice/Police Information Network (PIN) to inform it that this rule is prohibited by G.S. 114-10.1.

This rule provides that a defendant's attorney is entitled to access to information available through the PIN system only after requesting access with the district attorney. Whereas, the statute provides that:

The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding (G.S. 114-10.1).

The Committee's position is that this statute grants the defendant's attorney immediate access to the PIN system without requesting prior approval from the district attorney.

A response within 60 days from receipt of this notification is required by statute (G.S. 120-30.29).

Yours truly,

Terrence D. Sullivan
Terrence D. Sullivan
Director of Research

TDS/EAC:crm

Attachments

cc: Members of Administrative Rules Review Committee

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: April 27, 1979

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: William C. Corley
(Name)

Adm. Procedures Act Coordinator - _____
(Agency & Address)

North Carolina Department of Justice / Police Information Network
407 North Blount Street, Post Office Box 27047
Raleigh, North Carolina 27610

_____ Phone: 733-3171

RULE: 12 NCAC 4C .0406
(Citation; N. C. Administrative Code)
Access by Defendant's Attorney
(Catchline)

☒ Objection by Administrative Rules Review Committee

Date of Committee decision: April 17, 1979
Date of Agency Response to Committee objection: _____

☐ Objection Continued by Legislative Research Commission

Date of Commission decision: _____

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)



file

State of North Carolina

Department of Justice

JFUS L. EDMISTEN
ATTORNEY GENERAL

P. O. Box 629
RALEIGH
27602

June 29, 1979

The Honorable William H. McMillan
Chairman, Administrative Rules Review Committee
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Representative McMillan:

Pursuant to G.S. §120-30.29 this response to the objections of the Administrative Rules Review Committee of April 27, 1979 is submitted on behalf of the Attorney General of North Carolina and the North Carolina Police Information Network, G.S. §§114-1, 114-10; 114-10.1. Pursuant G.S. §120-30.29 the Attorney General and Police Information Network do hereby return Rule 12 NCAC 4C.0406 (Filed as an Emergency Regulation effective November 14, 1978 for a period of 120 days; Adopted as a permanent regulation effective March 14, 1979) with the objections of the Committee attached thereto. The Attorney General and PIN offer as the reason for this action their view that the regulation at issue is within the statutory authority of the Attorney General of North Carolina and Police Information Network.

The supervision, direction and management of the North Carolina Department of Justice is vested by law in the Attorney General of North Carolina, North Carolina Constitution, Article III, §7; G.S. §114-1, G.S. §143A-6, and G.S. §143A-49. The Police Information Network is an agency of the North Carolina Department of Justice, G.S. §143A-55, within the Division of Criminal Statistics, G.S. §§114-10; 114-10.1. These statutes set out the broad parameters of the authority of the Attorney General.

The determinative test of whether a regulation passes review of the Administrative Rules Review Committee of the Legislative Research Commission is "whether or not the agency acted within its statutory authority in promulgating the rule."* G.S. §120-30.28.

*It appears to us, therefore, to be ironic that Mr. Sullivan's letter noting the Committee's objection expresses the conclusion "that this rule is prohibited by G.S. 114-10.1." [Emphasis supplied.]

Letter to The Honorable William H. McMillan
June 29, 1979
Page Two

The method of analysis used by our Courts to determine whether a regulation meets that test is governed by the following principles. In State's Rights Democratic Party v. Board of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948) the Supreme Court, quoted with approval the following:

Administrative rules and regulations, to be valid, must be within the authority conferred upon the administrative agency. The power to make regulations is not the power to legislate in the true sense, and under the guise of regulation legislation may not be enacted. The statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder.

In Motsinger v. Perryman, 218 N.C. 15, 9 S.E.2d 511 (1940) the Court said:

The authority to make rules and regulations to carry out an express legislative purpose or to effect the operation and enforcement of a law is not an exclusively legislative power, but is rather administrative in its nature and may be delegated. An administrative commission, within definite valid limits, may be authorized to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. So long as a policy is laid down and a standard is established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities both the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. 11 Am. Jur., p. 955, et seq.; 11 Am. Jur., p. 960, sec. 242. However, boards and commissions of this character having authority to adopt rules and regulations do not exercise any of the powers delegated to the Legislature. They do not make laws. 11 Am. Jur., 961, sec. 242; Provision Co. v. Daves, supra, and cases cited.

The authority granted is to "fill in the details" in respect to procedural and administrative matters.

Furthermore, "The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some facts or state of facts upon which the law makes, or intends to make its own action depend..." State v. Curtis, 230 N.C. 169, 52 S.E.2d 364 (1949).

However, "...when the jurisdiction of a court is properly invoked to review the action of a public official to determine whether he, in choosing one of two or more courses of action, abused his discretion, the court may not direct any particular course of action. It only decides whether the action

Letter to The Honorable William H. McMillan
June 29, 1979
Page Three

of the public official was contrary to law or so patently in bad faith as to evidence arbitrary abuse of his right of choice...." Burton v. Reidsville, 243 N.C. 405, 90 S.E.2d 700 (1956).

When judged under these standards it is plain that Rule 12 NCAC 4C.0406 is within the statutory authority of the Attorney General and Police Information Network. A good faith disagreement as to the validity of the regulation must ultimately center around two Department of Justice positions:

- (1) The operative language of the 1977 amendment to G.S. §114-10.1, "the rules and regulations...shall not prohibit an attorney...from obtaining information..." authorizes the regulation at issue.
- (2) The regulation allows the maximum feasible access by criminal defense attorneys to Police Information Network services which is consistent with the best interests of Police Information Network users and federal law and regulations.

Attached to this letter are the papers in the case of State of North Carolina v. Billy David Hill, No. 78-CR-4771 (District Court Division of McDowell County 1978). Without regard to whether the Committee or Commission incline to agree with the conclusion of Judge Guice (Order of 16 November 1978, Conclusion of Law No. 3) that the regulation is within the statutory authority of the Attorney General, it is the position of the Attorney General that the correspondence and papers in that case set forth the arguments on either side of the federal regulation issue with sufficient completeness. That issue will not, then, be further argued.

We turn, therefore, to an analysis of the language of the statute. G.S. §114-10.1(c), as amended, provides in relevant part, as follows:

The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding....

The underlined portion of the section just quoted was added by S.L. 1977, Chapter 836, §1 (Eff. 30 June 1977). The statute, therefore, mandates a broad rulemaking responsibility for the Attorney General. The 1977 amendment, after the nature of a proviso, provides that the rules and regulations "shall not prohibit..." In fact, the rules and regulations of the Police Information Network have never "prohibit[ed]" a criminal defense attorney from obtaining information relevant to his case. Such access was

Letter to The Honorable William H. McMillan
June 29, 1979
Page Four

never legally authorized prior to the adoption of the instant regulation since the Attorney General had never adopted a regulation permitting it. Likewise, the 1977 amendment does not authorize access to the Network or to any information contained therein. The amendment simply denies, within the context of a broad regulatory responsibility, the authority to prohibit one group of persons from obtaining information in certain circumstances. This expression of legislative intent by the 1977 General Assembly was assumed by the Department of Justice to be a directive to establish a mechanism whereby that which had not theretofore been permitted, access to information by a criminal defense attorney, be made possible. To that end, the present regulation accomplishing that purpose was adopted. We therefore respectfully submit that the Committee's position that "the statute grants the defendant's attorney immediate access to the PIN system without requesting prior approval from the district attorney" is in error.

For the foregoing reasons, the reasons expressed in the Opinion of the Attorney General of 19 September 1978, and the reasons expressed in the papers in the Hill case, the Attorney General and Police Information Network respectfully submit that the regulation in question is within their statutory authority. The Attorney General and Police Information Network respectfully request: (1) That the Committee reconsider its position and withdraw its objection; or (2) in the alternative, that this regulation and the Committee's objection be referred to the consideration of the Legislative Research Commission; and (3) that either the Committee, Commission, or both of them schedule a hearing concerning this regulation and the objections of the Committee thereto.

It is requested that further notice of any proceedings concerning this matter be directed to the undersigned. If I can be of further assistance to the Committee or the Commission in respect of this matter, please do not hesitate to call on me at (919) 733-3786.

Very truly yours,

RUFUS L. EDMISTEN
ATTORNEY General



David S. Crump
Special Deputy Attorney General

cc: Mr. William C. Corley
Director, Police Information Network

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

REPRESENTATIVE WILLIAM H. McMILLAN
CHAIRMAN
SENATOR DALLAS L. ALFORD, JR.
SENATOR ROBERT S. JORDAN, III
SENATOR I. BEVERLY LAKE, JR.
REPRESENTATIVE JAMES F. MORGAN
SENATOR WILLIS P. WHICHARD
REPRESENTATIVE RICHARD WRIGHT

July 13, 1979

Senator W. Craig Lawing, Cochairman
Speaker Carl J. Stewart, Jr., Cochairman
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Lawing and Speaker Stewart:

Pursuant to G.S. 120-30.29, I am referring Rule 12 NCAC 4C .0406 (Access by Defendant's Attorney) to the Legislative Research Commission. This rule was the subject of an objection by the Administrative Rules Review Committee at its April 17, 1979, meeting and has been returned, without change, by the North Carolina Department of Justice, Police Information Network (copy attached).

Pursuant to G.S. 120-30.30, the Legislative Research Commission has 60 days from June 29, 1979, the date the rule was returned to the Administrative Rules Review Committee without change, to complete their review.

Please contact me if I can be of assistance.

Yours truly,

A handwritten signature in cursive script that reads "Terrence D. Sullivan".

Terrence D. Sullivan
Director of Research

TDS/SHF/sp

Attachment

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



STAFF
TERENCE D. SULLIVAN
DIRECTOR OF RESEARCH

Received 8/29/79
[Signature]

REPRESENTATIVE WILLIAM H. MCHILLAN
CHAIRMAN

SENATOR DALLAS L. ALFORD, JR.
SENATOR ROBERT R. JORDAN, III
SENATOR I. BEVERLY LAKE, JR.
REPRESENTATIVE JAMES F. MORGAN
SENATOR WILLIS P. WHICHARD
REPRESENTATIVE RICHARD WRIGHT

August 24, 1979

Mr. David Crump
Special Deputy Attorney General
Justice Building
Raleigh, N.C. 27611

Dear Mr. Crump:

The Legislative Research Commission hereby continues the objection of its Administrative Rules Review Committee made on April 17, 1979 to Rule 12 NCAC 4C .0046 (Access by Defendant Attorney) promulgated by the Police Information Network (PIN). The rule was returned without modification by PIN to the Committee on June 29, 1979. The earlier objection and cited rule are attached.

It is contemplated that the Legislative Research Commission will hold an informal hearing in September 1979 to consider the arguments of the Police Information Network that the rule is within PIN's statutory authority.

Please note that PIN must return the rule with or without change within 30 days of the notification to the agency of the Commission's objection.

Yours truly,

[Signature]

Senator W. Craig Lawing
Co-chairman

[Signature]
Speaker Carl J. Stewart, Jr.
Co-chairman

TDS/WLP/lis

Attachments

cc: The Honorable Rufus L. Edmisten
Attorney General

Mr. William Corley
Director



State of North Carolina

Department of Justice

P. O. Box 629

RALEIGH

27602

September 11, 1979

RUFUS L. EDMISTEN
ATTORNEY GENERAL

The Honorable W. Craig Lawing
President Pro Tempore, North Carolina Senate
and Co-chairman, Legislative Research Commission
Legislative Building
Raleigh, North Carolina

The Honorable Carl J. Stewart, Jr.
Speaker, North Carolina House of Representatives
and Co-chairman, Legislative Research Commission
Legislative Building
Raleigh, North Carolina

Dear Senator Lawing and Speaker Stewart:

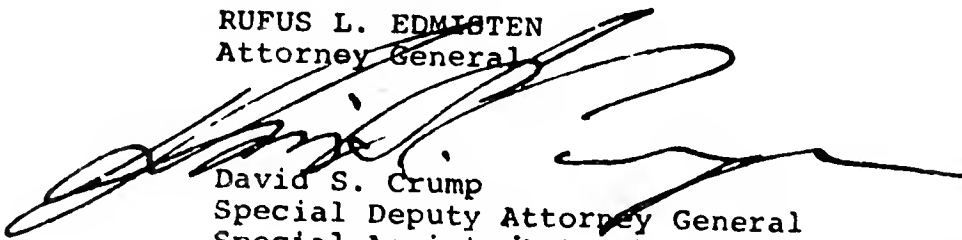
Pursuant to your request of August 24, 1979, the Police Information Network with the North Carolina Department of Justice herewith returns Rule 12 NCAC 4C .0406 without modification. The reasons for this action are the same as those outlined in my letter of June 29, 1979, to the Honorable William H. McMillan, Chairman of the Administrative Rules Committee.

I look forward to a hearing being scheduled for the purpose of taking up this regulation with the Research Commission. At the present time it is my intention to be out of the office from September 14 through September 23, however, I will be available for the hearing when scheduled.

If I can be of further assistance to you with respect to this matter, please do not hesitate to call on me.

Yours very truly,

RUFUS L. EDMISTEN
Attorney General



David S. Crump
Special Deputy Attorney General
Special Assistant to the Attorney General

DSC/p

NCIC/CCH 141 for the purpose of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant offenses.

(b) Excluded from such a system are arrests and court actions limited only to nonserious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run). Offenses committed by juvenile offenders shall also be excluded unless a juvenile offender is tried in court as an adult.

(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

§ 20.33 Dissemination of criminal history record information

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:

(1) To criminal justice agencies for criminal justice purposes; and

(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.

(3) Pursuant to Pub. L. 92-544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated pursuant to this subsection

code, accompanied by information relating to the disposition of that arrest.

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving department or related agencies.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

§ 20.34 Individuals' right to access criminal history record information

(a) Any individual, upon request upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.

(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. If the contributor corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

§ 20.35 National Crime Information Center Advisory Policy Board

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philos-

apply, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.

(a)(1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of two years commencing on January 5th of each odd numbered year.

(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and various segments of this community.

(3) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.

(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local state and Federal statutes and these Regulations.

(d) The Board shall review and consider security and privacy aspects of the NCIC system and shall have a Standing Security and Confidentiality Committee to provide input and recommendations to the Board concerning security and privacy of the NCIC system on a continuing basis.

(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat 770.

(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these regulations.

§ 20.36 Participation in the Computerized Criminal History Program.

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency.

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails to comply with the provisions of Subpart C.

APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

Subpart A—§ 20.3(b). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history, (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

Chapter I—Department of Justice

§ 21.1

by the FBI for Federal, state and local agencies.

§ 20.32 The grandfather clause contained in the third paragraph of this Section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses which were stored prior to February, 1973.

In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

§ 20.33 Incorporates the provisions of a regulation issued by the FBI on June 26, 1974 limiting dissemination of arrest information not accompanied by disposition information outside the Federal government on non criminal justice purposes. This regulation is cited in 28 CFR 50.12.

§ 20.34 The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 FR 16.30-34.

The procedures by which an individual obtain a copy of his Computerized National History record are as follows:

An individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be.

The record on file will then be verified by his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits may require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C., by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification

prints compared with those already on file in the FBI, or, possibly, in the State's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the CCH file.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in Subpart B in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

(Order No. 662-76, 41 FR 34949, Aug. 18, 1976)

PART 21—WITNESS FEES

Sec.

21.1 Employees of the United States serving as witnesses.

21.2 [Reserved]

21.3 Fees and allowances of witnesses in the District of Alaska.

21.4 Use of table of distances.

21.5 Certification of witness attendance.

AUTHORITY: 28 U.S.C. 1821, et seq., unless otherwise noted.

§ 21.1 Employees of the United States serving as witnesses.

(a) *Applicability.* This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to travel expenses.*

(1) An employee is entitled to travel expenses in connection with any judicial or agency proceeding with respect to which he is summoned (and is authorized by his agency to respond to such summons), or is assigned by his agency: (i) To testify or produce official records on behalf of the United States, or (ii) to testify in his official capacity or produce official records on behalf of a party other than the United States.

(2) The term "judicial proceeding" as used in this section means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other pro-



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

RECEIVED
APR 14 1980

April 10, 1980

Mr. William C. Corley
Director, Police Information Network
North Carolina Department of Justice
Post Office Box 27047
Raleigh, NC 27611

Dear Mr. Corley:

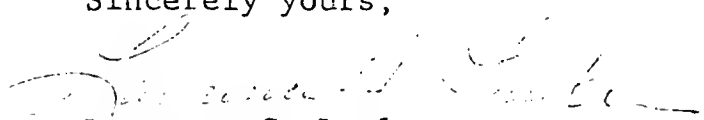
In your letter dated April 1, 1980, you requested an opinion as to whether or not NCIC would terminate services to the Police Information Network (PIN) should legislation providing "unrestricted" access to information contained in PIN by defense counsel be approved. Assistant Director Bayse, in his response of November 6, 1979, defined the pertinent sections of Title 28, Part 20 of the Code of Federal Regulations.

The restrictions contained in Title 28 CFR 20. Section 20.38 provide for cancellation of services to those agencies which fail to comply with the provisions of this section.

By way of further assistance, the enclosed photocopy of the U.S. Department of Justice Privacy and Security Planning Instructions which interprets the Regulations, excludes the defense attorney as eligible to receive records as a criminal justice agency.

Should legislation be approved for providing unrestricted access and dissemination of the information contained in NCIC to defense counsel, PIN would be subject to cancellation of the services of NCIC.

Sincerely yours,


Lawrence G. Lawler
Chief
National Crime Information Center

ENCLOSURES

SESSION 1978

80

INTRODUCED BY

Referred to

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THE EDUCATIONAL REQUIREMENTS FOR A PSYCHOLOGICAL
EXAMINER'S LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.11(b) is amended by adding the
following:

"(2) The Board shall not prescribe any educational requirements
other than the master's degree in psychology required by this
subsection."

Sec. 2. This act shall become effective upon ratification.

NORTH CAROLINA STATE BOARD OF PRACTICING PSYCHOLOGISTS

Contents

I. Rule

- A. Agency Report (February 2, 1979)
- B. Rule 21 NCAC 54 .0303(b)
(Education Requirements)

II. Statutory Authority

- A. G.S. 90-270.2(f)
- B. G.S. 90-270.9
- C. G.S. 90-270.11(b)

III. Committee Objection

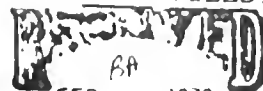
- A. Correspondence (April 19, 1979)
- B. Objection Form

IV. Board Response

- A. Correspondence (April 6, 1979)
- B. Correspondence (June 12, 1979)
- C. Agency Report (August 14, 1979)
- D. Rule 21 NCAC 54.0303(b)

V. Legislative Research Commission - Continued Objection

VI. Board Response - Correspondence, September 19, 1979



FEB 5 1979

(for Receipt Stamp)
LEGISLATIVE SERVICES OFFICE

Date: February 2, 1979

From: N.C. State Board of Examiners of Practicing Psychologists
(name)

Adm. Procedures Act Coordinator - Martha E. Noggle

(agency & address)

N.C. State Board of Examiners of Practicing Psychologists

Counseling Center - Appalachian State University

Boone, NC 28608

Phone: (704) 262-2258

To: William H. Potter, Jr.
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

RULE: 21 NCAC 54 .0303(b) *5005*
(citation; N. C. Administrative Code)

EDUCATION REQUIREMENTS
(catchline)

(1) RULE SUMMARY

Rule defines the educational requirements one must meet in order to be licensed as a Psychological Examiner.

(2) STATUTORY AUTHORITY CITATION

G.S. 90-270.9, -270.11(b)

(3) CIRCUMSTANCES REQUIRING RULE

One would not be competent to practice as a Psychological Examiner unless he/she had taken appropriate courses in individual assessment.

(4) EFFECTIVE DATE

March 1, 1979

Form-10:LSO:Rev.9/1/78

5005

Regulation 21 NCAC 54 .0202(b); EDUCATION REQUIREMENTS; has been changed to read as follows:

Licensure for the level of psychological examiner requires a master's degree in psychology which includes appropriate courses in individual assessment.

History Note: Statutory Authority G.S. 90-270.0,
-270.11(b);
Eff. February 1, 1976;
Readopted Eff. December 9, 1977;
Amended Eff. March 1, 1979; July 20, 1976.

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the

program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34 10 et seq.

§ 90-265. Grounds for refusing licensure; revocation.

Editor's Note. —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 18A.

Practicing Psychologists.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34 10 et seq.

§ 90-270.2. Definitions.

(f) "Psychological examiner" is an individual, licensed within the meaning of this Article, who offers to render, or renders professional psychological services such as interviewing or administering and interpreting tests of mental abilities, interests, aptitudes, and personality characteristics for such purposes as psychological evaluation, or for educational, vocational or personnel selection, guidance or placement. The psychological examiner does not engage in overall personality appraisal or classification, personality counseling or personality readjustment techniques except under qualified supervision in accordance with the duly adopted rules and regulations of the Board.

(1977, c. 670, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added "in accordance with the duly adopted rules and regulations of the Board" to the end of subsection (f).

As the rest of the section was not changed by the amendment, only subsection (f) is set out.

§ 90-270.3. Practice of medicine and optometry not permitted. — Nothing in this Article shall be construed as permitting licensed practicing psychologists or psychological examiners to engage in any manner in all or any of the parts of the practice of medicine or optometry licensed under Articles 1 and 6 of Chapter 90 of the General Statutes, including, among others, the diagnosis and correction of visual and muscular anomalies of the human eyes and visual apparatus, eye exercises, orthoptics, vision training, visual training and

serve for one year, two members for two years, and two members for three years. Within 30 days after July 1, 1967, the executive committee of the North Carolina Psychological Association shall, with the advice of the chairman of the graduate departments of psychology in this State, submit to the Governor a list of the names of 10 persons who are eligible for licensing as practicing psychologists under this Article, giving due regard to the required composition of the Board, and from which the Governor will select the Board within 30 days. The five psychologists appointed to the first Board shall be deemed to be and shall become licensed practicing psychologists immediately upon their appointment and qualification as members of the Board. All terms of service on the Board expire June 30 in appropriate years. As the term of a member expires, or as a vacancy occurs for any other reason, the North Carolina Psychological Association, or its successor, shall, with the advice of the chairmen of the graduate departments of psychology in the State, for each vacancy, submit to the Governor a list of the names of three eligible persons, and from this list the Governor shall make the appointment for a full term, or for the remainder of the unexpired term, if any. Each Board member shall serve until his successor has been appointed. (1967, c. 910, s. 6.)

§ 90-270.7. Qualifications of Board members. — Each member of the Board shall have the following qualifications:

- (1) Be a resident of this State and a citizen of the United States;
- (2) He shall hold the doctoral degree in psychology, or in a closely allied field, either of which qualifies him for membership in the North Carolina Psychological Association and the American Psychological Association;
- (3) Be at the time of his appointment, and shall have been for at least five years prior thereto, actively engaged as a psychologist in one or more branches of psychology or in the education and training of doctoral or postdoctoral students of psychology or in psychological research, and such activity during the two years preceding appointment shall have occurred primarily in this State. (1967, c. 910, s. 7.)

§ 90-270.8. Compensation of members; expenses; employees. — Members of the Board shall receive no compensation for their services, but shall receive their necessary expenses incurred in the performance of duties required by this Article, as prescribed for State boards generally. The Board may employ necessary personnel for the performance of its functions, and fix the compensation therefor, within the limits of funds available to the Board; however, the Board shall not employ any of its own members to perform inspectional or similar ministerial tasks for the Board. In no event shall the State of North Carolina be liable for expenses incurred by the Board in excess of the income derived from this Article. (1967, c. 910, s. 8.)

§ 90-270.9. Election of officers; meetings; adoption of seal and appropriate rules. — The Board shall annually elect a chairman and vice-chairman from among its membership. The Board shall meet annually, at a regular time set by the Board, in the City of Raleigh, and it may hold additional meetings and conduct business at any place in the State. Three members of the Board shall constitute a quorum. The Board may empower any member to conduct any proceeding, hearing or investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board shall adopt an official seal, which shall be affixed to all licenses issued by it. The Board shall make such rules and regulations not inconsistent with law, as may be necessary to regulate its proceedings and otherwise to implement the provisions of this Article. (1967, c. 910, s. 9.)

§ 90-270.6. Board of Examiners in Psychology; appointment; term of office; composition. — For the purpose of carrying out the provisions of this Article, there is hereby created a North Carolina State Board of Examiners of Practicing Psychologists, which shall consist of five members to be appointed by the Governor. At all times four members shall be licensed practicing psychologists, and the fifth shall be either a licensed psychological examiner or a licensed practicing psychologist. Due consideration shall also be given to the adequate representation of the various fields and areas of practice of psychology. Terms of office shall be three years. All terms of service on the Board expire June 30 in appropriate years. As the term of a member expires, or as a vacancy occurs for any other reason, the North Carolina Psychological Association, or its successor, shall, with the advice of the chairmen of the graduate departments of psychology in the State, for each vacancy, submit to the Governor a list of the names of three eligible persons, and from this list the Governor shall make the appointment for a full term, or for the remainder of the unexpired term, if any. Each Board member shall serve until his successor has been appointed. (1967, c. 910, s. 6; 1977, c. 670, s. 5.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, deleted the former second sentence, which required that at least two members of the Board be primarily engaged in graduate teaching or research in psychology and at least two members be primarily engaged in rendering services in psychology, rewrote the present second sentence, inserted "and areas of practice" in the present third sentence, deleted "and of the first Board one member shall be appointed to serve for one year, two members for two years, and two members for three years" from the end of the present fourth sentence, and deleted the former sixth and seventh sentences, which related to appointment to the first Board.

§ 90-270.7. Qualifications of Board members. — Each member of the Board shall have the following qualifications:

- (2) He shall hold a doctoral or master's degree in psychology; (1977, c. 670, s. 6.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote subdivision (2).

As the other subdivisions were not changed by the amendment, only the introductory language and subdivision (2) are set out.

§ 90-270.11. Licensing and examination. — (a) Practicing Psychologist. —

- (1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination fee of fifty dollars (\$50.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:
 - a. Is at least 21 years of age;
 - b. Is of good moral character;
 - c. Has received his doctoral degree based on a planned and directed program of studies, the content of which was psychological in nature, from an accredited educational institution; and subsequent to receiving his doctoral degree has had at least two years of acceptable and appropriate supervised experience germane to his area of practice as a psychologist;
 - d. Has not within the preceding six months failed an examination given by the Board.
- (2) In order for a psychological examiner to be upgraded to a practicing psychologist, the applicant must comply with the requirements set

forth in subdivision (1) hereof; however, a fifty dollar (\$50.00) examination fee only shall be required.

(b) Psychological Examiner. —

(1) The Board shall issue a license to practice psychology to any applicant who pays an application fee of fifty dollars (\$50.00) and an additional examination fee of fifty dollars (\$50.00), who passes a satisfactory examination in psychology, and who submits evidence verified by oath and satisfactory to the Board that he:

- a. Is at least 21 years of age;
- b. Is of good moral character;
- c. Has received a master's degree in psychology from an accredited educational institution;
- d. Has not within the preceding six months failed an examination given by the Board.

(c) Examinations. — The examinations required by subsections (a) and (b) of this section shall be of a form and content prescribed by the Board, and may be oral, written, or both. The examinations shall be administered annually, or more frequently as the Board may prescribe, at a time and place to be determined by the Board. (1967, c. 910, s. 11; 1971, c. 889, ss. 2, 3; 1975, c. 675, ss. 1, 2; 1977, c. 620, s. 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "an application fee" for "a fee," inserted "and an additional examination fee of fifty dollars (\$50.00)" near the beginning of subdivision (1) of subsections (a) and (b) and added subdivision (2) of subsection (a).

The 1977 amendment, effective July 1, 1977, in paragraph (1)c of subsection (a), inserted "planned and directed" and substituted "psychological in nature" for "primarily psychological" and "supervised experience

germane to his area of practice" for "professional experience." In paragraph (1)c of subsection (b), the amendment deleted "based on two academic years of graduate training" following "master's degree" and deleted "or in lieu thereof, such training and experience as the Board shall consider equivalent thereof" from the end.

Cited in *Duggins v. North Carolina State Bd. of Cert. Pub. Accountant Exmrs.*, 25 N.C. App. 131, 212 S.E.2d 657 (1975)

§ 90-270.12: Repealed by Session Laws 1977, c. 670, s. 8, effective July 1, 1977.

§ 90-270.14. Renewal of licenses. — A license issued under this Article must be renewed annually on or before the first day of January. Each application for renewal must be accompanied by a renewal fee of twenty dollars (\$20.00). If a license is not renewed on or before the first of January of each year, an additional fee of two dollars (\$2.00) shall be charged for late renewal. (1967, c. 910, s. 14; 1971, c. 889, s. 1; 1975, c. 675, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, increased the renewal fee in the second sentence from \$10.00 to \$20.00.

§ 90-270.15. Refusal, suspension, or revocation of licenses. — (a) A license applied for, or issued under this Article may be refused, suspended, or revoked by the Board upon proof that the person to whom the license was issued:

- (1) Has been convicted of a felony; or
- (2) Has been guilty of fraud or deceit in securing the license or any renewal thereof; or
- (3) Is an habitual drunkard or is addicted to the use of deleterious habit-forming drugs; or

AN ACT TO REDEFINE A "PSYCHOLOGICAL EXAMINER" AS A "PSYCHOLOGICAL ASSOCIATE".

The General Assembly of North Carolina enacts:

G.S.
§ 90-270.2

Section 1. G.S. 90-270.2(f) is amended on line 1, by deleting the words "Psychological examiner", and inserting in lieu thereof the words "Psychological associate", and is further amended on line 6, by deleting the words, "psychological examiner" and inserting in lieu thereof the words "psychological associate".

G.S.
§ 90-270.3

Sec. 2. G.S. 90-270.3 is amended on line 3, by deleting the words "psychological examiners", and inserting in lieu thereof the words "psychological associates", and is further amended on lines 8 and 9 by deleting the words "psychological examiner", and inserting in lieu thereof the words "psychological associate".

G.S.
§§ 90-270.4,
90-270.5,
90-270.6,
90-270.10,
90-270.16

Sec. 3. G.S. 90-270.4(c), G.S. 90-270.5(f), G.S. 90-270.6, G.S. 90-270.10, G.S. 90-270.16(a) and G.S. 90-270.16(b) are amended by deleting the words "psychological examiner" whenever those words appear and inserting in lieu thereof the words "psychological associate".

Sec. 4. G.S. 90-270.4(a) is amended on lines 8 and 9, by deleting the words "psychological examiners" and inserting in lieu thereof the words "psychological associates".

O.G.
190-270.11

Sec. 5. G.S. 90-270.11(a) (2) is amended on line 1, by deleting the words "psychological examiner" and inserting in lieu thereof the words "psychological associate".

Sec. 6. G.S. 90-270.11(b) is amended by deleting the subheading title "Psychological Examiner" and inserting in lieu thereof the title "Psychological Associate".

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 29th day of May, 1979.

JAMES C. GREEN

James C. Green

President of the Senate

CARL J STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives

Senate Bill 602

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

REPRESENTATIVE WILLIAM H. MCMILLAN
CHAIRMAN

REPRESENTATIVE DALLAS L. ALFORD, JR.
REPRESENTATIVE ROBERT B. JORDAN, III
REPRESENTATIVE I. BEVERLY LAKE, JR.
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE WILLIS P. WHIGHAM
REPRESENTATIVE RICHARD WRIGHT



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

April 19, 1979

N. C. State Board of Examiners of Practicing Psychologists
Counseling Center-Appalachian State University
Boone, North Carolina 28608

Dear Ms. Noggle:

The Administrative Rules Review Committee reviewed Rule 21 NCAC 54 .0303(b) (Education Requirements, copy attached) and directed its staff to inquire with the North Carolina State Board of Examiners of Practicing Psychologists to ascertain if there is statutory authority for the rule. The Agency Report (filed with the rule) cites general authority to "...make rules and regulations not inconsistent with law...[G.S. 90-270.9]" and the "...masters degree requirement that the licensee possess a training in psychology...(or its equivalent) [G.S. 90-270.11(b)]."

Responding to the staff's inquiry, the Board stated in a letter dated April 6, 1979, that it was possible that a masters degree program would not require courses on individual assessment. The Board felt that these requirements are necessary to practice competently as a psychological examiner. Nowhere did the Board cite statutory authority enabling it to require that the masters degree program, prerequisite to licensure as a psychological examiner, include courses on individual assessment.

This objection is filed on the direction of the Administrative Rules Review Committee (G.S. 120-30.28). A response within 60 days from receipt of this notification is required by statute (G.S. 120-30.29).

Yours truly,

Terrence D. Sullivan
Terrence D. Sullivan
Director of Research

TDS/EAC/fb

Attachments

G-11

cc: Members of Administrative Rules Review Committee

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: April 19, 1979

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: Martha E. Noggle
(Name)

Adm. Procedures Act Coordinator - _____
(Agency & Address)

N.C. State Board of Examiners of Practicing Psychologists
Counseling Center - Appalachian State University
Boone, North Carolina 28608

Phone: _____

RULE: 21 NCAC 54 .0303(b)
(Citation; N. C. Administrative Code)
Education Requirements
(Catchline)

[X] Objection by Administrative Rules Review Committee
Date of Committee decision: April 17, 1979
Date of Agency Response to Committee objection: _____

[] Objection Continued by Legislative Research Commission
Date of Commission decision: August 9, 1979

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)

File

NORTH CAROLINA



STATE BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS

JOHN P. MULGREW, Ph.D.
Chairman

April 6, 1979

Counseling Center
Appalachian State University
Boone, NC 28608
(704) 262-2258

Ms. Susan Frost
Admin. Rules Review Comm.
Legislative Bldg. Annex
10 Jones Street
Raleigh, NC 27611

Dear Ms. Frost:

I am writing in reference to the proposed educational requirement rule for psychological examiners. The Board of Examiners feels that one must have successfully completed course work in individual assessment if he/she is to practice competently as an examiner. It is possible that a masters degree program would not contain such courses. Testing is obviously a major part of what a Psychological Examiner is licensed to do. For this reason, the Board proposed the rule that the committee is currently reviewing.

Please feel free to contact me if you need any further information.

Sincerely,

Martha E. Noggle

Martha E. Noggle
Executive Secretary



RECEIVED
JUN 13 1979

State of North Carolina

Department of Justice

P. O. Box 620

RALEIGH

27602

June 12, 1979

LEGISLATIVE SERVICES OFFICE

US L. EDMISTEN
ATTORNEY GENERAL

Mr. Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611

Dear Mr. Sullivan:

I am writing as attorney for the North Carolina State Board of Examiners of Practicing Psychologists in response to a letter from you, dated April 19, 1979. Your letter indicated that the Administrative Rules Review Committee questioned the statutory authority of the North Carolina State Board of Examiners of Practicing Psychologists, referred to simply as the Board during the rest of this letter, to put Rule 21 NCAC 54 .0303(b) into effect.

Rule 21 NCAC 54 .0303(b) requires a master's degree in psychology including appropriate courses in individual assessment for licensure at the level of psychological examiner. G.S. 90-270.11(b)(1) requires a master's degree in psychology from an accredited educational institution as a prerequisite for licensure as a psychological examiner. I understand the Administrative Rules Review Committee has no problem with the rule that requires a master's degree in psychology for licensure.

I understand the problem raised by the Administrative Rules Review Committee is the authority of the Board to require appropriate courses in assessment as a prerequisite for licensure as a psychological examiner. G.S. 90-270.2(f) defines a psychological examiner as an individual "who offers to render, or renders professional psychological services such as interviewing or administering and interpreting tests of mental abilities, interests, aptitudes, and personality characteristics for such purposes as psychological evaluation, or for educational, vocational or personnel selection, guidance or placement. The psychological examiner does not engage in overall personality appraisal or classification, personality counselling or personality readjustment techniques except under qualified supervision."

As you can see from G.S. 90-270.2(f), a psychological examiner can do most of the things that a licensed practicing psychologist can do, except that a psychological examiner must have qualified supervision for most of his or her activities. However, the main activity for which a psychological examiner is not required to have

Mr. Terrence D. Sullivan
Page Two
June 12, 1979

supervision is administering and interpreting tests of mental abilities, interests, aptitudes, and personality characteristics. It is in the individual assessment courses that a student is taught to administer and interpret such tests. It seems rather meaningless to require licensure at all if a psychological examiner cannot be expected to have had courses in the one major area of activity for which licensure is required, but for which a psychological examiner is not required to have supervision. The Board feels that a good master's program ordinarily has individual assessment courses, at least if the program is designed to allow the individual to practice.

The Board does have authority to "make such rules and regulations not inconsistent with law, as may be necessary to regulate its proceedings and otherwise to implement the provisions" of the licensure law. G.S. 90-270.9. The Board feels that it is not inconsistent with the law, and that indeed it is necessary to implement the provisions of the licensure law, to have some assurance that an individual who is licensed to administer and interpret tests without any supervision have some minimal training in testing or assessment procedures. Consequently, the Board feels that this rule is well within its statutory authority.

It does seem that the Board should have included G.S. 90-270.2 (f) in the statutory authority cited in the history note for Rule 21 NCAC 54 .0303(b). Without citing G.S. 90-270.2(f), the Board does not indicate the basis for the requirement for individual assessment courses. I will recommend to the Board that they amend the history note accordingly at their next meeting.

Please let me know if I can answer any questions or provide any further information concerning this matter.

Very truly yours,

RUFUS L. EDMISTEN
Attorney General



Norma S. Harrell
Assistant Attorney General

NSH/p

AUG 17 1979
DATE FILED: *ll*

ICY REPORT: Legislative Review of Administrative Rules
(G.S. 120-30.20 et seq.)

DIRECTOR OF RESEARCH

Date: August 14, 1979 (revised report)

(for Receipt Stamp)

From: N.C. State Board of Examiners of Practicing Psychologists
(name)

Adm. Procedures Act Coordinator - Martha E. Noggle

(agency & address)

N.C. State Board of Examiners of Practicing Psychologists

Counseling Center - Appalachian State University

Boone, NC 28608

Phone: (704) 262-2258

To: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

LE: 21 NCAC 54 .0303(b)
(citation; N. C. Administrative Code)

EDUCATION REQUIREMENTS
(catchline)

) **RULE SUMMARY**

Rule defines the educational requirements one must meet in order to be licensed as a Psychological Examiner.

) **STATUTORY AUTHORITY CITATION**

G.S. 90-270.2(f), -270.9, -270.11(b)

) **CIRCUMSTANCES REQUIRING RULE**

One would not be competent to practice as a Psychological Associate (Examiner) unless he/she had taken appropriate courses in individual assessment.

) **EFFECTIVE DATE**

March 1, 1979

Form-10:LSO:Rev. 3/1/79

Administrative Rules Review Committee Policies:

1) 60 DAY INITIAL REVIEW PERIOD

G.S. 120-30.23(c) sets up a 60 day period from the time of filing of a rule for the Administrative Rules Review Committee to review the rule. If an Agency has not been notified of an objection to a rule within 60 days of the filing of the rule, the Agency can consider that the rule has been accepted (not approved) by the Committee. No further formal review of the rule will be undertaken by the Committee unless there is a decision to proceed under the public hearing provision of G.S. 120-30.30.

2) CITATION TO FEDERAL LAW OR REGULATION

G.S. 120-30.20(c)(2) requires citation of North Carolina statutory authority for a rule when the rule is filed with the Committee. The Committee requests Agencies to also cite any Federal law or regulation that is relevant to the rule. Some brief treatment of the relevancy of the Federal law or regulation should be included in the statement of circumstances requiring the rule.

3) FILING OF READOPTED RULES

The case of American Guarantee & Liability Insurance Company v. Ingram, 32 N.C. App. 552, has been interpreted to require readoption of rules that do not meet certain procedural requirements. The Committee requests that Agencies give notice of all rules readopted on or after October 1, 1977, in response to this case, but the report on a rule required by G.S. 120-30.20(c) is necessary only with respect to new material included in the readoption. A report shall be made to the Committee only on new rules, amendments to old rules, and repeal of old rules; no report is required on simple readoption of rules identical to old rules.

11/1/77

Regulation 21 NCAC 54 .0303(b); EDUCATION REQUIREMENTS; has been changed to read as follows:

Licensure for the level of psychological examiner requires a master's degree in psychology which includes appropriate courses in individual assessment.

History Note: Statutory Authority G.S. 90-270.2(f),
-270.9, -270.11(b);
Eff. February 1, 1976;
Readopted Eff. December 9, 1977;
Amended Eff. March 1, 1979; July 20, 1976.

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

REPRESENTATIVE WILLIAM H. McMILLAN
CHAIRMAN

SENATOR DALLAS L. ALFORD, JR.
SENATOR ROBERT B. JORDAN, III
SENATOR I. BEVERLY LAKE, JR.
REPRESENTATIVE JAMES F. MORGAN
SENATOR WILLIS P. WHICHARD
REPRESENTATIVE RICHARD WRIGHT



STAFF
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

August 9, 1979

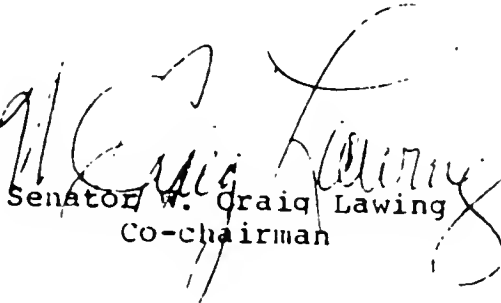
North Carolina Board of Examiners of Practicing Psychologists
Mrs. Norma S. Harrell
Assistant Attorney General
Justice Building
Raleigh, N.C.

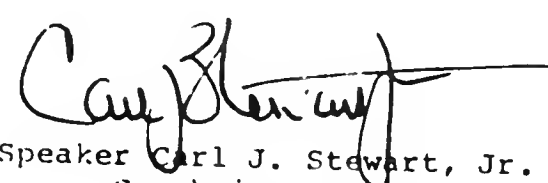
Dear Mrs. Harrell:

The Legislative Research Commission hereby continues the objection of its Administrative Rules Review Committee made on April 7, 1979, to Rule 21 NCAC 54 .0303(b), Psychological Examiners. The rule was returned by the Board of Examiners of Practicing Psychologists to the Committee, without change, on June 12, 1979. The earlier objection and the cited rule are attached.

Please note that the State Board of Examiners of Practicing Psychologists must return the rule with or without change within 30 days of the notification to the agency of the Commission's objection.

Yours truly,


Senator W. Craig Lawing
Co-chairman


Speaker Carl J. Stewart, Jr.
Co-chairman

TDS/WLP/lis

Attachments

cc: Mr. John P. Mulgrew
Chairman

The Honorable James B. Hunt, Jr.
Governor

RECEIVED
NORTH CAROLINA 13/1979
DEPT. OF ATTORNEY GENERAL
by Norma S. Harrell
Assistant Attorney General
Council for the NC State
Referred to
Board of Examiners of
Practicing Psychologists



SEP 25 1979

LEGISLATIVE SERVICES OFFICE

STATE BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS

R. KERRY JACOBSON, Ph.D.
Chairperson

September 19, 1979

Counseling Center
Appalachian State University
Boone, NC 28608
(704) 262-2258

Mr. Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, NC 27611

Dear Mr. Sullivan:

I am writing to confirm that the Board of Examiners of Practicing Psychologists has reviewed Rule 21 NCAC 54 .0303(b). It is the consensus of the Board that the rule remain as amended effective March 1, 1979. Please refer to the letter submitted to your office by Ms. Norma Harrell, Assistant Attorney General, on June 12, 1979 for a complete justification. In addition, a revised agency report was sent on August 14, 1979 including G.S. 90-270.2(f) in the statutory authority cited in the History Note.

Please contact our office if you should need any further information.

Sincerely,

A handwritten signature in cursive script that reads "R. Kerry Jacobson".

R. Kerry Jacobson, Ph.D.
Chairperson

RKJ:men

Enclosures

